HIGH COURT OF UTTARAKHAND AT NAINITAL

(Court's order whether the case is or not approved for reporting.)
(Chapter VIII Rule 32 (2) (b)

Description of the case.

Writ Petition No. 940 (S/S) 2007

Smt. Pushpa Aswal .....Petitioner

Vs.

State of Uttarakhand
And 2 others. ....Respondents
(And 44 other connected petitions)

Approved for reporting
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~~Not approved for reporting.~~

Date of Decision 11th October, 2007.

Initial of Judge.

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IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

(1) Writ Petition No. 940(S/S)2007

Smt. Pushpa Aswal W/o Sri Pooran Singh Aswal,
Headmistress, Primary School, Gupt Kashi,
Block Ukhimath,
District Rudraprayag. ----Petitioner.

Vs.

1. State of Uttarakhand through Secretary Education, Govt. of Uttarakhand, Dehradun,
2. Director of School Education, Uttarakhand, Dehradun,
3. District Education Officer, Rudraprayag, District Rudraprayag. ---Respondents

With

(2) WPSS 937 (S/S)07
Revti Rawat vs. State and two others.

With

(3) WPSS 986 (S/S)07
Narmada Bamola vs. Add. Distt. Education Officer & three others.

With

(4) WPSS 996 (S/S)07
Bharti Chaudhary vs. State and two others.

With

(5) WPSS 1023 (S/S)07
Vinod Kumari Bisht vs. State and two others.

With

(6) WPSS 1031 (S/S)07
Shobha Arya vs. State and two others.

With

(7) WPSS 1032 (S/S)07
Mohan Singh vs. State and two others.

With

(8) WPSS 1045 (S/S)07
Uma Bisht vs. State and three others.

With

(9) WPSS 1072 (S/S)07
Kusum Ghansiyal vs. Add. District Education officer.

With

(10) WPSS 1076 (S/S)07
Leela Vaishnav vs. State and three others.

With

(11) WPSS 1078 (S/S)07
Darmiyan Singh Jethudi vs. State and two others.

With

(12) WPSS 1081 (S/S)07
Shakuntala Negi and four ors. vs. State and three others.

With

(13) WPSS 1086 (S/S)07
Pushpalata Bhaskar vs. State and two others.

With

(14) WPSS 1088 (S/S)07
Kusumlata Panwar vs. State and three others.

With

(15) WPSS 1091 (S/S)07
Girish Chandra Khati vs. State and two others.

With

(16) WPSS 1093 (S/S)07
Shashi Negi vs. State and three others.

With

(17) WPSS 1095 (S/S)07
Manveer Singh Chauhan and two ors. vs. State & two others.

With

(18) WPSS 1097 (S/S)07
Mamta Pandey vs. State and three others.

With

(19) WPSS 1109 (S/S)07
Amita Kweera vs. State and three others.

With

(20) WPSS 1110 (S/S)07
Sunita Bhandari vs. State and three others.

With

(21) WPSS 1111 (S/S)07
Nirmala Godiyal vs. State and three others.

With

(22) WPSS 1115 (S/S)07
Madhulika Thapliyal vs. State and three others.

With

(23) WPSS 1116 (S/S)07
Gayatri Rana vs. State and three others.

With

(24) WPSS 1118 (S/S)07
Sumitra Dabral vs. State and two others.

With

(25) WPSS 1125 (S/S)07
Balwant Singh vs. State and two others.

With

(26) WPSS 1126 (S/S)07
Urmila Devi vs. State and four others.

With

(27) WPSS 1138 (S/S)07
Sakuntala Kandwal vs. State and three others.

With

(28) WPSS 1139 (S/S)07
Suresh Chandra vs. State and three others.

With

(29) WPSS 1145 (S/S)07
Rampyari Chauhan vs. State and three others.

With

(30) WPSS 1146 (S/S)07
Vimla Gupta vs. State and three others.

With

(31) WPSS 1154 (S/S)07
Shashi Prabha and another vs. State and two others.

With

(32) WPSS 1157 (S/S)07
Bharti Kholia & five ors. vs. State and three others.

With

(33) WPSS 1161 (S/S)07
Bhuwan Chandra Kafaltiya & two ors. vs. State & three others.

With

(34) WPSS 1163 (S/S)07
Nirmala Nainwal vs. State and three others.

With

(35) WPSS 1170 (S/S)07
Hamanti Ghildiyal vs. State and two others.

With

(36) WPSS 1194 (S/S)07
Meera Kukreti vs. State and two others.

With

(37) WPSS 1200 (S/S)07
Veena Sharma vs. State and two others.

With

(38) WPSS 1201 (S/S)07
Deepa Arya vs.District Education Officer & another.

With

(39) WPSS 1213 (S/S)07
Anandi Arya vs. District Education Officer & another.

With

(40) WPSS 1215 (S/S)07
Jaishila Chauhan and another vs. State & two others.

With

(41) WPSS 1221 (S/S)07
Kusumlata Sharma vs. State & two others.

With

(42) WPSS 1244 (S/S)07
Gopal Dutt Bhatt vs. State and three others.

With

(43) WPSS 1272 (S/S)07
Kailash Chandra Joshi vs. State and three others.

With

(44) WPSS 1262 (S/S)07
Shobha Dalakoti vs. State and three others.

With

(45) WPSS 1288 (S/S)07
Vineeta Shuyal vs. State and two others.

Sarva Sri S.K. Posti Adv., Rajendra Dobhal, Adv., Manoj Tewari, Adv., Pankaj Purohit, Adv., V.B.S. Negi, Adv., B.S. Adhikari, Adv., D.S. Patni, Adv., M.S. Chauhan, Adv., Arun Mohan Saklani, Adv., B.S. Negi, Adv., Dinesh Chauhan, Adv., Subhash Upadhyay, Adv., Ravi Babulkar, Adv., Anil Bisht, Adv., Vikas Pandey, Adv., N.S. Pundir, Adv., C.S. Rawat, Adv., M.S. Bisht, Adv., Ashish Rawat, Adv., Pradeep Hairiya, Adv., N.S. Rautela, Adv., Prabhakar Joshi, Adv., N.K. Khandelwa, Adv., K.C. Tewari, Adv., Prem S. Uniyal, learned counsel for the petitioners.

AND.

Sri H.M. Raturi, learned Standing Counsel for the State/respondents.

Hon'ble M.M. Ghildiyal, J.

Heard learned counsel for the petitioners and learned Standing Counsel for the State/respondents.

In all the above writ petitions, the petitioners who are working as Headmaster/Headmistress in the Primary schools have been transferred by the respondents on different dates. The ground transferring the petitioners is common that since the particular petitioner had joined his/her present place of posting in the Institution at the last therefore; he/she is being transferred being an excess teacher. Aggrieved with the transfer orders, the petitioners have approached this Court.

Since common question of law is involved which is to be determined by this Court in all these writ petitions, therefore for the sake of convenience all the above petitions have been consolidated and are being decided by a common judgment. Writ petition no. 940(ss) of 2007 Smt. Pushpa Aswal vs. State and others shall be treated as the leading case.

Brief facts, which emerge out from all the petitions, are identical except the fact that one petitioner is

transferred from place-‘A’ to place-‘B’ and other has been transferred from place-‘C’ to place ‘D’.

The respondents have filed counter affidavit in writ petition no. 940 (ss)2007 Smt. Pushpa Aswal vs. State and others to which the petitioner Smt. Pushpa Aswal has filed rejoinder affidavit in the aforesaid writ petition. The respondents have submitted that the counter affidavit filed in the said writ petition may be read in all other writ petitions.

The law of transfer has been will settled by the Courts in a catena of decisions. A person holding a transferable post, cannot claim a vested right to work at a particular place as the transfer order does not affect any of his/her legal rights and Court should not interfere with the transfer order passed in public interest of administrative exigency. Transfer or posting are ordinary incidents of service and ordinarily any transfer or posting is presumed to have been made to satisfy the administrative exigency of service. No consent is required from the employee before transferring him. Even if the transfer order has been passed taking into consideration the complaints against an employee or has been passed on the directions of Minister of the Department concerned on being receiving complaint from public should not be interfered as the same would avoid any future trouble or incident which may take place. Since the transfer being incident of service, for providing power to transfer no specific provision is required. Even if the transfer order has been passed in violation of Guidelines framed by the Govt., the remedy before the employee is first to join at

the new place of posting and then to make representation to the Authority concerned. It is true that the Guidelines framed by the Govt. for transfer of employee does not have statutory force, but at the same time, it is expected from the Govt. to follow the Guidelines which has been framed by the Govt. itself, otherwise there is no meaning to frame Guidelines, if the same are not to be followed. Again, though the Court should not ordinarily interfere with the transfer orders except on the ground that the transfer orders has been passed mala-fide, stigmatic in nature and is a frequent transfer, the Court may interfere even if the Guidelines on the basis of which the transfer has been made is absolutely arbitrary, the Court cannot sit silently and can interfere in the circumstances.

Various questions have been raised by the petitioners during the course of arguments.

Firstly; that the petitioners though have joined the Institutions at the last, but they should not have been transferred on the ground that by his/her joining to the Institution, the strength of teachers in the Institution has become in excess, specially when the teachers working in the School have a long stay and the Headmaster has joined only few months back.

Secondly, in none of the impugned orders in the writ petitions it is mentioned that the employee is being transferred, instead of the word “Transfer”, the word ‘SAMAYOJAN’ has been used.

Thirdly, in some of the impugned orders while adjusting the person to some other Institution, it is specifically stated by the transferring authority that the person concerned will not be entitled to get TA/DA.

Learned Standing Counsel for State Sri H.M. Raturi has submitted that pursuant to the Govt. order dated 28.05.2007 issued in continuation of Govt. order dated 12.12.2005, the strength of teachers in proportion to number of students in Junior Basic Schools and Senior Basic Schools has been fixed. By the Govt. Order dated 12.12.2005 and 13.07.2007, the authorities have been directed to transfer such teachers who have joined in the Institution and by joining his/her in the Institution the strength of teachers, which is prescribed, has become in excess. He has further submitted that in the Basic Education, the district-wise details of number of Schools, number of students, sanctioned posts of Headmaster/ Headmistress and Assistant Teachers has been prepared, which shows that the sanctioned posts of Headmasters is less than the number of Schools with the result there are many Junior Basic Schools as well as Senior Basic Schools, being run without Headmasters/Headmistress and in those Schools, the senior teacher is holding the charge of Headmaster. The respondents have annexed a chart. In the chart, it is indicated that in the District Pauri, there are 1673 Schools against which only 1568 posts of Headmasters/Headmistresses are created. In District Chamoli 507 posts of Headmasters/Headmistresses are created against 973 Schools. Similar is the condition in respect of all other Districts. The total number of Junior Basic Schools and Senior Basic Schools, as the per the chart,

is 12112; whereas only 8796 posts of Headmasters/ Headmistresses have been created by the State Govt.

Contention of learned Standing Counsel is that the impugned transfer orders have been passed by the respondents transferring the Headmasters/ Headmistresses from one Institution where the sanctioned strength of Teachers has become in excess due to joining of that Headmaster by directing to join in a School where there is no Headmaster or Headmistress and those transfer orders impugned in these writ petitions are prefect, just and proper which are not in violation of any Rule. Further, the intention of direction issued by the Director of Schools to all the District Education Officers was to maintain uniformity and availability of Teachers in those Schools where there is lack of Teachers and this decision was taken in the interest of education and further in exigency of the service, the transfer order cannot be challenged.

Prior to enforcement of Uttaranchal Education Act, 2006 (Act no. 8 of 2006 which came into force on 22nd April 2006), the services of Primary School Teachers were being governed by U.P. Basic Education (Teachers) Service Rules 1981. The Rules were framed under Sub Section 1 of Section 19 of Uttar Pradesh Basic Education Act 1972 (hereinafter referred to as the Act no. 34 of 1972). Rule-5 of 1981 Rules aforesaid provides for source of recruitment for Assistant Teachers/Headmasters of Junior Basic School as also of Senior Basic School. Rule 21 of the aforesaid Rule provides procedure for transfer which reads as under:-

21. Procedure for Transfer:- There shall be no transfer of any teacher from rural local area to an urban local area or vice versa or from one urban local area to another of the same district or from local area of one district to that of another district except on the request of or with the consent of the teacher himself and in either case approval of the Board shall be necessary.

Basic School/Junior Basic School/Senior Basic School/Local Area/Urban Local Area and Teacher has been defined under Rule-2 of the aforesaid Rules. Rule 2(1)c defines Basic School. Rule 2(1)h and Rule 2(1)m define Junior Basic School and Senior Basic School. Rule 2(1)c, 2(1)h and Rule 2(1)m are reproduced hereunder:-

Rule2(1)c:- 'Basic School' means a school where instruction from Class I to VIII are imparted.

Rule2(1)h:- 'Junior Basic School' means a Basic School where instructions from Class I to V are imparted.

Rule2(1)m:- :- 'Senior Basic School' means a Basic School where instructions from Class VI to VIII are imparted.

Under Rule-3, these Rules shall apply to:-

(i) all teachers of Local Bodies transferred to the Board u/s 9 of the Act; and

(ii) all teachers employed for the Basic and Nursery Schools established by the Board.

On bifurcation of State of Uttarakhand from State of U.P., the Act and the Rules applicable in the State of Uttar Pradesh were adopted by the State of Uttarakhand and the services of these teachers were governed by these

Rules of 1981, which were framed under Act no. 34 of 1972.

The State of Uttarakhand passed Act no. 8 of 2006, which came into force on 22.04.2006. Section 60 of the Uttaranchal School Education Act 2006 relates to Repeal and Saving which is reproduced hereunder:-

(1). The Uttaranchal (The Uttar Pradesh Intermediate Education Act, 1921) Adaptation and Modification Order, 2002, The Uttaranchal (The Uttar Pradesh Basic Education Act, 1972) Adaptation and Modification Order, 2002, The Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 and the Uttar Pradesh Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978 are hereby repealed.

(2). Notwithstanding such repeal, anything done or any action taken under the Principal Acts referred to in sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of the Act as if the provisions of the Act were in force at all material times.

Thus, after enforcement of the Act no. 8 of 2006, Act of 1972 and Rules framed therein in 1981 are not applicable now in the case of teachers employed in Basic Schools i.e. in Junior Basic Schools and Senior Basic Schools.

Under Section 58 of Act no. 8 of 2006, provision has been made for the teachers of these schools which provides that all the teachers, officers and employees of Basic Shiksha Parishad, including any supervising or inspecting officer or employee working immediately before the date of the commencement of this Act, shall be transferred to the State Government and they shall become teachers, officers and employees of the State Government and their services shall be governed by the service rules prescribed by the State Government.

Learned counsel for the petitioners Sri S.K. Posti has submitted that though Rules have been framed under the Act, however the same are not approved, thus no Rules or Regulations under the Act are in force at present.

Under Section 56 of Act no. 8 of 2006, the State Govt. has been empowered to issue Notification in the Gazette and to remove the difficulty by making such incidental or consequential provisions, not affecting the substance.

Provided that no order shall be made after the expiration of the period of two years from the date of commencement of this Act.

Provided further that such every order as soon as shall be laid, before the State Legislative Assembly.

Learned counsel for the petitioners have submitted that, though the Rules have been framed u/s 56 of the Act no. 8 of 2006, but the Rules have yet not been approved nor any Notification if issued to remove the difficulty has

been laid before the State Legislative Assembly as required u/s 58 of the Act.

For the purposes of deciding the issues involved, following Govt. Orders/Circular are relevant:-

(1) G.O. dated 18th September 2003 was issued by the State of Uttarakhand for transfer of teachers of Basic Education. Clause 2 & 3 of this G.O. provides as under:-

"प्रत्येक विद्यालय में कम से कम 02 शिक्षकों की तैनाती की जाए और 40 छात्र पर एक शिक्षक के निर्धारित मानकानुसार 101 छात्र पर 03 अध्यापकों और 141 छात्र संख्या एवं उससे अधिक पर चौथे अध्यापक की व्यवस्था की जाए।"

"प्रत्येक जूनियर हाईस्कूल में 01 विज्ञान शिक्षक की नियुक्ति अनिवार्य की जाए और सम्पूर्ण जनपद में शिक्षकों के स्वीकृत पदों के आधार पर प्रत्येक विद्यालय में प्रधानाध्यापक और विज्ञान अध्यापक सहित 04 शिक्षकों की तैनाती की जाय। जहॉ 01 जूनियर हाईस्कूल में 05 शिक्षकों के पद स्वीकृत हैं वहीं दूसरे विद्यालय में प्रधानाध्यापक रहित 03 ही शिक्षकों के पद स्वीकृत हैं, इस असमानता को दूर किया जाए।"

"जहॉ शहरी एवं सुविधाजनक स्थान के विद्यालयों में मानक से कहीं अधिक शिक्षक कार्यरत हैं, वहीं ग्रामीण एवं दुर्गम तथा अति दुर्गम क्षेत्रों में स्थित विद्यालयों में निर्धारित मानक के अनुसार शिक्षक कार्यरत नहीं हैं। इसलिए यह सुनिश्चित किया जाए कि किसी भी विद्यालय में स्वीकृत/मानक से अधिक शिक्षक किसी भी स्थिति में कार्यरत न रहें। मानक से अधिक शिक्षकों की तैनाती के लिए सम्बन्धित अधिकारी उत्तरदायी होंगे।"

On 9th July 2005, Director of Education issued order to transfer teachers where the strength of teachers in any school is in excess than the prescribed strength. The District Education Officers/Addl. District Education Officers following the guidelines, issued by Director on 09.07.2005, transferred the Headmaster where the strength of teachers has become in excess because of joining the school by the Headmaster. Consequently, the

Director of Education has clarified its earlier order on 16.07.2005, which reads as under:-

"प्रेषक,

निदेशक,

विद्यालयी शिक्षा, उत्तरॉचल,

मयूर विहार, देहरादून।

सेवा में,

1. जिला शिक्षा अधिकारी, रूद्रप्रयाग,

2. अपर जिला शिक्षा अधिकारी, बेसिक,रूद्रप्रयाग।

पत्रांक बेसिक/13905–7/2005–06 दिनांक 16 जुलाई, 2005.

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महोदय,

उपर्युक्त विषयक निदेशालय के पत्र संख्या बेसिक/12731–34/2005–06 दिनांक 8 जुलाई, 2005 का संदर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा आपको निर्देशित किया गया थाकि यदि किसी विद्यालय में 01 प्रधानाध्यापक और 01 से अधिक सहायक अध्यापक कार्यरत हों तो मानक से अधिक अध्यापक की दशा में बाद में आये सहायक अध्यापक को सरप्लस मानते हुए स्थानान्तरित किया जायेगा, किन्तु खेद है कि अभी भी निदेशालय के संज्ञान में यह बात आयी है कि आपके द्वारा किसी प्राथमिक विद्यालय में एक ही प्रधानाध्यापक होने पर भी उसे प्रधानाध्यापक को मानक से अधिक सरप्लस मानते हुए स्थानान्तरिक कर दिया गया है। जो कि उक्त निर्देर्शों के विपरीत है।

यदि यह तथ्य सही है तो ऐसी स्थिति में आप तत्काल कार्यवाही करते हुए उक्त प्रधानाध्यापकों को अग्रिम कार्यवाही तक कार्यमुक्त न करें। इसके साथ ही संदर्भित प्रकरण पर आख्या निदेशालय को फैक्स से प्रेषित करें। प्रतिकूल स्थिति में सम्पूर्ण उत्तरदायित्व आपका होगा।

भवदीय,

एस0के0माहेश्वरी, निदेशक

(ii) Letter dated 7th October 2005 was issued by the Director of School Education, Uttarakhand, Dehradun by which the number of teachers in an Institution has been prescribed on the basis of strength of students. It is

further provided in the G.O. that in every Junior High School, there must be, at least, one Science Teacher as also one Headmaster/Headmistress. The relevant extract of the Govt. Order is reproduced hereunder:-

"प्रेषक,

निदेशक,

विद्यालयी शिक्षा, उत्तरॉचल,

मयूर विहार, देहरादून।

सेवा में,

अपर सचिव शिक्षा,

उत्तरॉचल शासन।

पत्रांक/ बेसिक/35725/2005–06 दिनांक 7 अक्तूबर, 2005.

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महोदय,

जनपदों के परिषदीय प्राथमिक एवं उच्च प्राथमिक विद्यालयों में छात्र अध्यापक मानकों के सम्बन्ध में उत्तरॉचल निदेशालय में उपलब्ध शासनादेशों एवं उत्तर प्रदेश बेसिक शिक्षा परिषद् के निर्देशों के अनुसार आख्या/प्रस्ताव निम्नवत् प्रेषित हैं:–

अविभाजित राज्य उत्तर प्रदेश में बेसिक शिक्षा परिषद् के परिपत्र संख्या बे0शि0प0/36244–611/87–88/दिनांक 5.2.88 (छायाप्रति संलग्न) के अनुसार जनपदों के प्राथमिक एवं उच्च प्राथमिक विद्यालयों में 30 सितम्बर की छात्र संख्या को आधार मानकर विद्यालयवार 40–1 छात्र–अध्यापक के अनुपात में अध्यापकों की आवश्यकता निर्धारित किये जाने का प्राविधान किया गया है। उक्त अनुपात के आधार पर प्रत्येक विद्यालय में कम से कम दो अध्यापकों की व्यवस्था किये जाने के साथ ही 100 से कम छात्र संख्या होने पर दो अध्यापक, 100 छात्र संख्या पर तीन, 140 पर चार अध्यापक तथा इसी प्रकार प्रत्येक 40 छात्रों पर एक अतिरिक्त अध्यापक की गणना की जायेगी। अर्थात् 40–1 के मानक का निर्धारण निम्नवत् किया जायेगा:–

छात्र संख्या	अध्यापक संख्या
100 तक	02
101–140	03
141–180	04
181–220	05

उक्त के अनुसार ही उत्तरॉचल शासन द्वारा भी आदेश संख्या 200/बे0शि0/2003 दिनांक 18 सितम्बर 2003 (छायाप्रति संलग्न) के अनुसार प्राथमिक विद्यालयों में अध्यापकों की तैनाती हेतु निर्देश दिये गये हैं।

उत्तरॉचल शासन के आदेश संख्या 200/बे0शि0/2003 दिनांक 18 सितम्बर 2003 (छायाप्रति संलग्न) के अनुसार उच्च प्राथमिक विद्यालयों में अध्यापकों की तैनाती हेतु निम्न निर्देश दिये गये हैं

प्रत्येक जूनियर हाई स्कूल में 01 विज्ञान अध्यापक की नियुक्ति अनिवार्य किया जाना तथा सम्पूर्ण जनपदों में शिक्षकों के स्वीकृत पदो ंके आधार पर प्रत्येक विद्यालय में प्रधानाध्यापक और विज्ञान अध्यापक सहित 04 शिक्षकों की तैनाती की जाए। जहॉ एक जूनियर हाई स्कूल में 05 शिक्षकों के पद स्वीकृत हैं, वहीं दूसरे विद्यालय में प्रधानाध्यापक रहित 03 ही शिक्षकों के पद सृजित हैं, इस असमानता को दूर किया जाए।

(iii) Again on 12th December 2005 another G.O. was issued by the Education Department, State of Uttarakhand fixing the strength of teachers in an Institution. In respect to Primary Schools, according to this G.O., upto 100 students 2 teachers will be posted in an Institution and in respect of Senior Basic Schools 4 teachers will be posted in an Institution where the strength of student is upto 100.

Under Clause-3 of this G.O. dated 12th December 2005, it is specifically stated that while counting the number of teachers in a particular Institution, the Headmaster will be included as a teacher for the purposes of fixing strength of the teachers. Relevant extract of the G.O. dated 12th December 2006 is being quoted below:-

“प्रेषक,

डी0के0कोटिया,

सचिव,

उत्तरॉचल शासन,।

सेवा में,

निदेशक,

विद्यालयी शिक्षा, उत्तरॉचल,

मयूर विहार, देहरादून।

शिक्षा अनुभाग–1(बेसिक) देहरादून दिनांक 12, दिसम्बर, 2005.

fo"k;%& tuinksa dh izkFkfed ,oa mPp izkFkfed fo|ky;ksa esa v/;kidksa dh x.kuk ds lEcU/k esaA

महोदय,

उपर्युक्त विषयक आपके पत्रांक–बेसिक/35725/2005 दिनांक 7.10.2005 के क्रम में मुझे यह कहने का निर्देश हुआ है कि बेसिक शिक्षा परिषद् उ0प्र0 के परिपत्र संख्या बे0शि0प0/36244–611/87–88 दिनांक 5.2.88 कं अनुसार जनपदों के प्राथमिक एवं उच्च प्राथमिक विद्यालयों में 30 सितम्बर की छात्र संख्या को आधार मानकार विद्यालयवार 40:1 छात्र–अध्यापक के अनुपात में अध्यापकों की आवश्यकता निर्धारित किये जाने का प्राविधान है।

2. उक्तानुसार ही, उत्तरॉचल राज्य के प्राथमिक विद्यालयों में 30 सितम्बर की छात्र संख्या को आधार मानकर विद्यालयवार 40:1 छात्र अध्यापक के अनुपात में निम्नानुसार अध्यापक संख्या निर्धारित की जाती है:–

छात्र संख्या	अध्यापक संख्या
100 तक	02
101–140	03
141–180	04
181–220	05
221–260	06

3. इसी प्रकार, उत्तरॉचल राज्य के उच्च प्राथमिक विद्यालयों में 30 सितम्बर की छात्र संख्या को आधार मानकार विद्यालयवार 40:1 छात्र अध्यापक के अनुपात में निम्नानुसार अध्यापक संख्या (प्रधानाध्यापक को सम्मिलित करते हुए)निर्धारित की जाती है:–

छात्र संख्या	अध्यापक संख्या
100 तक	04
101–140	05
141–180	06
181–220	07
221–260	08

100 छात्र संख्या हेतु निर्धारित 04 अध्यापकों में से निम्नानुसार अध्यापक होने आवश्यक हैं।

प्रथम अध्यापक– भाषा

द्वितीय अध्यापक– विज्ञान/गणित

तृतीय अध्यापक– अंग्रेजी

चतुर्थ अध्यापक– सामान्य

4. साथ ही, ईजीएस एवं एआईई केन्द्र जो कि प्राथमिक एवं उच्च प्राथमिक स्तर के होते हैं, में तैनात किये जाने वाले शिक्षा आचार्यों के सम्बनध में भी पीटीआर 1:40 के आधार पर अतिरिक्त आचार्य तैनात किया जायेगा। प्राथमिक स्तर पर न्यूनतम 100 बच्चों पर दो एवं उच्च प्राथमिक स्तर में 100 बच्चों पर न्यूनतम 03 आचार्य ही लगाये जायेंगे व अतिरिक्त आचार्य की व्यवस्था 100 के बाद बढ़ने वाली संख्या के लिए लागू होगी।

(iv) Again on 13th July 2007, the Govt. of Uttarakhand issued G.O. in respect of transfer of Junior Basic School Teachers as well as the Teachers of Senior Basic Schools, where the strength of teachers is in excess. The said Govt. Order is quoted hereunder:-

"प्रेषक,

डी0के0कोटिया,

सचिव,

उत्तरॉचल शासन,।

सेवा में,

निदेशक,

विद्यालयी शिक्षा, उत्तरॉचल,

मयूर विहार, देहरादून।

शिक्षा अनुभाग–1(बेसिक) देहरादून दिनांक 13, जुलाई, 2007.

fo"k;%& jkt dh; ikFkfed@iwo ek/;fed fo|ky;k e ekud l vf/kd dk;jr v/;kidk d lek;kt u d lcU/k eA

महोदय,

उपर्युक्त विषयक आपके पत्र संख्याः बेसिक/47592/2007–08 दिनांक 12 जुलाई, 2007 के क्रम में सम्यक् विचारोपरान्त मुझे यह कहने का निर्देश हुआ है कि प्राथमिक एवं पूर्व माध्यमिक विद्यालयों में मानक से अधिक कार्यरत अध्यापकों

को शासनादेश दिनांक 12 सितम्बर, 2005 में निर्धारित छात्रःअध्यापक मानकानुसार निम्नानुसार समायोजित किया जायेगाः–

¼d½ jkt dh; i kFkfed fo|ky;k e ekudkuqlkj v/;kidk dk lek;kt u&

राज्य के राजकीय प्राथमिक विद्यालयों में निम्नवत् छात्रःअध्यापक मानकानुसार अध्यापकों की संख्या निर्धारित की जायेगीः–

छात्र संख्या	अध्यापक संख्या
100 तक	02
101–140	03
141–180	04
181–220	05
221–260	06

(छात्रःअध्यापक संख्या इसी प्रकार आगे आगणित की जायेगी)

यदि किसी प्राथमिक विद्यालय में उक्तानुसार निर्धारित छात्र संख्या के सम्मुख अंकित अध्यापक संख्या से अधिक अध्यापक कार्यरत हैं तो निर्धारित मानक से अधिक कार्यरत अध्यापक को अन्यत्र अति दुर्गम/दुर्गम क्षेत्र में स्थित प्राथमिक विद्यालय में उपलब्ध रिक्त पद के प्रति निम्न प्रक्रियानुासर समायोजित किया जायेगा।

(i) किसी प्राथमिक विद्यालय में मानक से अधिक कार्यरत अध्यापक की पहचान उस विद्यालय में नियुक्ति/पदोन्नति/स्थानान्तरण के फलस्वरूप सबसे अन्त में कार्यभार ग्रहण करने वाले अध्यापक के रूप की जायेगी, जिसके कारण विद्यालय में मानक से अधिक अध्यापकों की संख्या हुई है।

(ii) यदि किसी प्राथमिक विद्यालय में सबसे अन्त में कार्यभार ग्रहण करने वाला अध्यापक प्रधानाध्यापक हो तथा उसके विद्यालय में कार्यभार ग्रहण करने के कारण विद्यालय में मानक से अधिक अध्यापक हो गये हों तो अन्त में कार्यभार ग्रहण करने वाले प्रधानाध्यापक को अन्यत्र अति दुर्गम/दुर्गम क्षेत्र के ऐसे विद्यालय में समायोजित किया जायेगा जिसमें प्रधानाध्यापक पूर्व से कार्यरत न हों।

¼[k½ jkt dh; i oZ ek/;fed fo|ky;k e ekudkuqlkj v/;kidk dk lek;kt u&

राज्य के राजकीय पूर्व माध्यमिक विद्यालयों में निम्नवत् छात्रःअध्यापक मानकानुसार अध्यापकों की संख्या निर्धारित की जायेगीः–

छात्र संख्या	अध्यापक संख्या
100 तक	04
101–140	05

141–180	06
181–220	07
221–260	08

(छात्रःअध्यापक संख्या इसी प्रकार आगे अगणित की जायेगी)

यदि किसी राजकीय पूर्व माध्यमिक विद्यालय में उक्तानुसार निर्धारित छात्र संख्या के सम्मुख अंकित अध्यापक संख्या से अधिक अध्यापक कार्यरत हैं तो निर्धारित मानक से अधिक कार्यरत अध्यापक को अन्यत्र अति दुर्गम/दुर्गम क्षेत्र में स्थित विद्यालय में उपलब्ध रिक्त पद के प्रति निम्न प्रक्रियानुासर समायोजित किया जायेगा।

(i) किसी पूर्व माध्यमिक विद्यालय में मानक से अधिक कार्यरत अध्यापक की पहचान उस विद्यालय में नियुक्ति/पदोन्नति/स्थानान्तरण के फलस्वरूप सबसे अन्त में कार्यभार ग्रहण करने वाले अध्यापक के रूप की जायेगी, जिसके कारण विद्यालय का मानक प्रभावित हुआ है।

(ii) यदि किसी पूर्व माध्यमिक विद्यालय में सबसे अन्त में कार्यभार ग्रहण करने वाला अध्यापक प्रधानाध्यापक हो तथा उसके विद्यालय में कार्यभार ग्रहण करने के कारण विद्यालय में मानक से अधिक अध्यापक हो गये हों तो अन्त में कार्यभार ग्रहण करने वाले प्रधानाध्यापक को अन्यत्र अति दुर्गम/दुर्गम क्षेत्र के ऐसे विद्यालय में समायोजित किया जायेगा जिसमें प्रधानाध्यापक पूर्व से कार्यरत न हों।

(iii) पूर्व माध्यमिक विद्यालयों में केवल छात्रःअध्यापक मानक को ध्यान में रखकर केवल छात्र संख्या के आधार पर समायोजन किया जायेगा। राज्य के बालक/बालिका एवं सह शिक्षा वाले पूर्व माध्यमिक विद्यालयों में मानकानुसार कार्यरत पुरूष अध्यापक अथवा महिला अध्यापिका को मात्र पुरूष एवं महिला संवर्ग को होने के आधार पर अन्यत्र समायोजित नहीं किया जायेगा।

(iv) मानक निर्धारत करते समय विषय संयोजन भी नहीं देखा जाना है।

(2) वर्तमान में केवल छात्रःअध्यापक मानक को दृष्टिगत रखते हुए ही प्राथमिक एवं पूर्व माध्यमिक विद्यालयों में उक्तानुसार समयोजन किया जायेगा। इन विद्यालयों में प्रधानाध्यापक–अध्यापक बिन्दु पर सम्पूर्ण राज्य के परिप्रेक्ष्य में विचार प्रथक से आदेश निर्गत किये जायेंगे। इसी प्रकार पूर्व माध्यमिक विद्यालयों में विषय संयोजन तथा बालक–बालिका विद्यालय में पुरूष–महिला शाखावार व्यवस्था के बिन्दु पर भी सम्पूर्ण राज्य के परिप्रेक्ष्य में विचार कर प्रथक से आदेश निर्गत किये जायेंगे।

(3) इस सम्बन्ध में यह भी स्पष्ट किया जाता है कि अति दुर्गम/दुर्गम क्षेत्र के किसी विद्यालय में समायोजित अध्यापक द्वारा अति दुर्गम अथवा दुर्गम क्षेत्र में स्थित किसी अन्य विद्यालय में रिक्त पद के प्रति समायोजित किये जाने हेतु

अनुरोध किया जाता है तो उसे आवेदित विद्यालय में उपलब्ध रिक्त पद के प्रति समायोजित कर दिया जाये।

(4) यद्यपि निदेशालय के पत्र संख्याः सेवा–2/10786–803/2007–08 दिनांक 26 मई 2007 एवं पत्र संख्याः सेवा–2/11320–36/2007–08 दिनांक 28 मई 2007 द्वारा जनपद स्तर पर प्राथमिक एवं पूर्व माध्यमिक विद्यालयों में समायोजन की कार्यवाही पूर्ण कर ली गयी है, तथापि जनपद स्तर पर किये गये अध्यापकों के समायोजन का इस शासनादेश के अनुसार परीक्षण करते हुए उत्पन्न विसंगतियों का निस्तारण कर दिनांक 21 जुलाई 2007 तक शासन/निदेशालय को सूचित करना सुनिश्चित करें।

The petitioners have assailed their transfer order and particularly the G.O. dated 13 July 2007, as by the said Govt. Order, guidelines have been issued for transfer of Primary School Teachers as well as the Teachers of Senior Basic Schools, where the strength of teachers is in excess and directions have been issued for transfer of Headmasters in a Junior Basic School or Senior Basic School, in case, the Headmaster/Headmistress has joined the Institution at the last due to which in a particular Institution the strength of teachers had become in excess than the prescribed strength.

Assailing the action of the respondents the petitioners have raised following issues to be determined by this Court:-

(1) Whether the G.O. dated 13th July 2007 was applicable in the case of some of the petitioners who have been transferred prior to issuance of the Govt. Order dated 13 July 2007 on the ground of excess teachers in a particular Institution?

(2) Whether transfer of petitioners should be treated as a transfer; or it is merely an adjustment, as stated in the impugned orders?

(3) Whether the petitioner, who has been transferred using the word 'SAMAYOJAN', is entitled to get transfer T.A., under the Provisions of Rule 42 of U.P. Financial Hand Book, Volume III?

(4) Whether a Headmaster should be transferred from a School, in case, the number of teachers has become in excess in a particular School than the prescribed strength fixed by the Govt. on account of joining of a Headmaster/ Headmistress in the School?

Issue no. 1:-

The order dated 13th July 2007 is contradictory itself. By the aforesaid Govt. Order, directions have been issued under that G.O. that if the strength of teachers has become in excess because of joining of a Headmaster in an Institution, he should be transferred to a School where no Headmaster is posted. From contents of the Govt. order, it appears that transfer shall be made irrespective of the fact that he/she belong to a separate cadre and further by transferring such person, the Institution will remain without any Head. Thus, on the case hand a Headmaster is being transferred to a School where no Headmaster is posted and on the other hand another School is being permitted to run without Headmaster and in case, some other person is transferred as Headmaster of any school, again the situation will remain the same and without any Head, there cannot be any Institution.

Further there cannot a retrospective effect of any Govt. Order. Almost all the petitioners were transferred prior to issuance of G.O. dated 13.07.2007 and, as such, the stand taken by the learned Standing Counsel, taking shelter of G.O. dated 13.07.2007 is not accepted.

Issue no. 2 & 3:-

Both these issue are interconnected and if be decided collectively, they shall put common impact upon the transfer policy adopted by the Govt., therefore both these issues are being decided jointly. Till date, after the enforcement of the present Act, the Govt. has not framed any Rule under the Act. Rules framed in 1981 under Act of 1972, were adopted by the State of Uttarakhand. Under the Rules of 1981, there was no provision for transfer of a Assistant Teacher in Primary Schools from rural local area to an urban local area or vice versa or from one urban local area to another of the same district or from local area of one district to that of another district except on the request of or with the consent of the teacher himself/herself and in either case approval of the Board was necessary but after the enforcement of Act no. 8 of 2006, under Section 58 of the Act the services of these teachers have been transferred to State Govt. and they have become teachers of the State Govt.

It appears that earlier the transfer of Primary School Teachers from one district to another in rural areas or in urban areas were being made and in place of transfer the terminology ‘SAMAYOJAN’ was being used and in order to this policy, the teachers were not being transferred to

far of areas from where they were working, consequently the word 'TRANSFER' was not being used and they were also not getting travelling allowances under Rule 42 (i) of the Financial Hand Book, vol.-III, and in pursuance of G.O. dated 11th June 1999. After enforcement of Act No. 8 of 2006, all the teachers of Junior Basic School and Senior Basic School have become Govt. servant u/s 58 of Act No. 8 of 2006 and Rule 42 of the Financial Hand Book, vol. III will be applicable to them. Rule 42(1) of the Financial Hand Book, vol. III is reproduced hereunder:-

Rules Regarding Special Journeys

Journeys on Transfer

42(1) A Government servant, for a journey on transfer from one station to another, if he is transferred in the interest of Government work and not at his own request, is entitled to a lump-sum at the following rates whether the journey is performed by rail or road alone or in combination with one another.

(i) xxx

(ii) xxx

(iii) xxx

(iv) xxx

(v) xxx

Provided that, if the new station of the Government servant on transfer is within the same district, the lump-sum will be admissible at 50% of the above rates:

Provided further that no lump-sum is available if the new station of the Government servant on transfer is situated within 8 kilometers of the old station.

(2) Besides the above, he will also be entitled to the following:-

(i) xxx

(ii) xxx

In fact, the word 'SAMAYOJAN' is the camouflage of the word 'TRANSFER' and the teacher transferred is entitled to get transfer T.A. in accordance with law.

Keeping in view the aforesaid discussions, the issues nos. 2 & 3 are being answered in favour of the petitioners and against the respondents.

Issue no. 4:-

So far the issue no. 4 is concerned, except in G.O. dated 13 July 2007, there is no mention in any of the aforesaid G.Os. that if strength of teachers in an Institution has become excess than the prescribed strength, by joining of a Headmaster, the teacher who has joined the School at last, irrespective of the fact whether he is a teacher or Headmaster, shall be transferred.

Both the parties have admitted that every Institution must have a Headmaster/Headmistress. It is a matter of common sense that there should not be any Institution without any Head. In fact, the G.O. dated 13 July 2007 is contrary itself, as it speaks about transfer of those Headmaster because of whom strength of teachers in an Institution has become in excess but on the other hand the said G.O. speaks that the teacher, if holding the post of Headmaster and on account of his/her joining the strength of teachers has become in excess, the person who has joined the Institution at the last, should be transferred to that Institution where there is no Head. In these circumstances, by transferring the petitioners, the

Department will have to make further arrangements for posting of some other Headmaster to that Institution from where the Headmaster has been transferred, and in this process, if accepted, the transferred Headmaster/ Headmistress will again be treated as the last person who has joined the Institution. Further by joining the person as Head of Institution, the sanctioned strength will again be in excess in that Institution and it will be a never ending game. So, there is no justification of issuing such directions by the Govt. to transfer those Heads, because of whom the sanctioned strength of teachers in the ratio of students has become in excess according to the policy framed by the Govt. itself.

Learned counsel for the petitioners have submitted that cadre of Primary School Teachers/Science Teachers and those of the Headmasters and their pay Scales are different and in case, a teacher is to be transferred, the Headmaster cannot be transferred by treating him/her to be a teacher. So far the question of treating the Headmaster as a teacher for the purpose of strength in an Institution is concerned that is perfectly correct, because the Headmaster has to perform duty of a teacher also.

Learned counsel for the petitioners have further submitted that the order of Government transferring an Assistant Teacher/Headmaster/Headmistress on the ground that because of joining of said teacher or Headmaster, the strength of Assistant Teacher has become surplus in an Institution, as such, the last person who has joined the Institution should be transferred, is not at all acceptable. Because the Principle of “last come-

first go", can be applied in the case of retrenchment and not in the case of transfers, on the contrary, normally in transfer matters, a person should be transferred who has a long stay in an Institution. Prima-facie, I agree with the submission advanced by learned counsel for the petitioners, but at the present moment, no direction can be issued to the Govt. on this issue, as the Govt. will have to adopt reverse policy, which will create chaos in the Department and further, the Court in policy matters may give a direction which is suggestive in nature and not a positive direction.

For the reasons recorded above all the writ petitions are allowed. Impugned transfer orders, so far it relates to the petitioners, are quashed.

Let certified copies of this judgment be placed in the connected writ petitions.

(M.M. Ghildiyal, J.)

October 11, 2007:
NCM: